IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 324 of 1999
in
SPECIAL CIVIL APPLICATION No. 6042 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAYANTIBHAI K SUTHAR

Versus

BANAKANTHA-MEHSANA GRAMIN BANK

Appearance:
MR IS SUPEHIA for Appellant

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE A.M.KAPADIA

Date of decision: 12/12/2000

ORAL JUDGEMENT (Per : MR.JUSTICE J.M.PANCHAL)

By means of filing this appeal under clause 15 of the Letters Patent, the appellant has challenged legality of the judgment dated February 11, 1999 rendered by the learned Single Judge in Special Civil Application No. 6042 of 1996 by which the prayer made by the appellant to set-aside award of the Central Industrial Tribunal in Reference [ITC] 58/91 and re-instate him in service with consequential benefits, is rejected.

The appellant was employed as a Cashier in Banaskantha-Mehsana Gramin Bank, which is respondent no. 1 in appeal. He absented from duty from May 23, 1988 until his name was struck off from the muster roll of the Bank on April 17, 1990. During this period, many letters were sent to the appellant for reporting on duty, which were returned to the office of the respondent no. 1-Bank with remarks `addressee refused to accept'. Thereafter, final notices were also sent to the appellant on August 26, 1989 and September 14, 1989 respectively advising the appellant to report for duty within seven days. In the said notices, it was intimated to the appellant that if he failed to report for duty, it would be deemed that he had voluntarily retired from service of the Bank on the expiry of the period stated in the notices. Those notices were duly received by the appellant. The appellant by letter dated October 2, 1989 acknowledged receipt of letter dated August 26, 1989 and stated that he would be reporting for duty only on November 20, 1989 and was unable to report prior to that date. Again, on November 20, 1989, the appellant sent a cryptic letter in furtherance of reply letter dated August 26, 1989 stating that it was not possible for him to report for duty on November 20, 1989, the deadline which was fixed by him in his previous letter. The appellant had not at all reported for duty thereafter nor responded to letter dated September 14, 1989. Under the circumstances drawing an inference that the appellant had voluntarily left the services, his name was struck off from the muster roll of the Bank.

The appellant raised an industrial dispute regarding legality of his termination of services alleging it to be illegal on two grounds viz., (1) that the termination of services was by way of punishment and punishment could not have been imposed without holding inquiry and (2), even if the termination of services was treated as retrenchment simpliciter, the provisions of Industrial Disputes Act, 1947 were not followed, and therefore, the termination of services was bad in law.

Both these pleas did not find favour with the

Tribunal. The Tribunal accepted the contention of the respondent that the appellant had voluntarily given up the job. In view of findings which were recorded by the Tribunal against the appellant, the Tribunal dismissed Reference by its judgment and award dated May 31, 1996. Feeling aggrieved by the said award, the appellant preferred Special Civil Application No. 6042 of 1996. The learned Single Judge has dismissed the same by judgment dated February 11, 1999, giving rise to the present appeal.

Learned counsel for the appellant submitted that the striking off the name of the appellant would amount to `retrenchment' within the meaning of Section 2(oo) of the Industrial Disputes Act, 1947 and as the procedure prescribed before effecting `retrenchment' was not followed, the petition ought to have been accepted by the learned Single Judge. Learned counsel further submitted that the appellant had never intended to give-up the service voluntarily and in view of letter addressed by the appellant to the Bank stating that he was inclined to report for duty, an inference could not have been drawn by the learned Single Judge that the appellant had abandoned the service voluntarily. What was emphasized was that the impugned order striking off the name of the appellant from the muster roll was liable to be set-aside as no inquiry was held by the Bank before taking such action, and therefore, the appeal should be entertained. In support of his submissions, learned counsel placed reliance on the decision rendered by the Supreme Court in H.D Singh v. Reserve Bank of India & Ors., AIR 1986 SC 132.

We have heard the learned counsel for the appellant and taken into consideration the documents forming part of the petition. The termination of services whether by way of punishment or otherwise, is an act of employer and governed by the various provisions of the statute. However, when an employee voluntarily abandons his services, it is not an act of the employer. In that event, the conduct of the employer is not under scrutiny. It is a question of fact whether employee has actually abandoned the job voluntarily or whether employer, by any of his acts, has brought an end of the employer-employee's relationship. In the later event, the question regarding validity of the action would require consideration where termination amounts to `retrenchment'. In the present case, from the facts noticed earlier which are not in dispute, the appellant had not reported for duty from May 23, 1998 to April 17, 1990. During this period, many letters were sent to him

asking him to report for duty, which were returned to the office of the Bank with the remarks `addressee refused to accept'. Even thereafter, final notices were sent to the appellant on August 26, 1989 and September 14, 1989 respectively advising the appellant to report for duty within seven days. In those notices, it was specifically stated that failure on the part of the appellant in reporting for duty would be viewed as `abandonment of services'. These notices were duly received by the appellant. The appellant, by letter dated October 2, 1989 acknowledged receipt of letter dated August 26, 1989 and stated that he would be reporting for duty only on November 20, 1989 and was unable to report prior thereto. Again on November 15, 1989, the appellant sent a cryptic letter in furtherance to reply letter dated August 26, 1989 stating that it was not possible for him to report for duty on November 20, 1989; the deadline which was fixed by himself in his previous letter. The appellant did not respond to the letter dated September 14, 1989 at all. Under the circumstances, we are of the view that the appellant had voluntarily abandoned service and striking off the name of the appellant from the muster roll cannot be construed as `retrenchment' within the meaning of Section 2 (oo) of the Industrial Disputes Act, 1947. In H.D Singh [Supra], an attempt was made by the respondent-Bank to get rid of the appellant of the said case. The disclosure made in the confidential circulars made it manifest that the Bank was determined to adopt methods to terminate services of the employees including the appellant of the said case. The appellant was not told that his name would be struck off the rolls nor was given any order in writing either refusing work or informing him that his name was struck off the roll. The case of the Bank that the appellant was orally informed that his name would be struck off was not believed. Under the circumstances, the Supreme Court has held that termination of services of the appellant before it amounted to `retrenchment' within the meaning of section 2 (oo) of the Industrial Disputes Act, 1947 and it was effected in violation of the mandatory provisions contained in section 25-F of the said Act and was invalid. In our view, the principles laid down in the said case is not applicable to the facts of the present case. It is true that the appellant had addressed a letter dated August 2, 1989 acknowledging receipt of letter dated August 29, 1989 and stated that he was inclined to report for duty only on November 20, 1989. However, the fact remains that the appellant had never reported for duty on November 20, 1989. Instead of reporting for duty, the appellant had addressed a letter dated November 15, 1989 stating that it was not possible

for him to report for duty on November 20, 1989. The facts of the case clearly show that the appellant had voluntarily abandoned the services and in such circumstances, it was not necessary for the respondent Bank to follow the procedure laid down under Section 25-F of the Industrial Disputes Act, 1947 before striking off the name of the appellant from the muster roll. The question whether the appellant had abandoned the services voluntarily or not is essentially a pure question of fact. It is relevant to notice that the appellant has not adduced any evidence before the Tribunal in support of his case that he had not voluntarily abandoned the service. On appreciation of evidence, the Tribunal has held that the appellant had voluntarily abandoned services. This finding is confirmed by the learned Single Judge, by the impugned judgment. The learned counsel for the appellant has failed to point out any error committed either by the Tribunal or by the learned Single Judge of this Court in recording finding that the appellant had voluntarily abandoned services. Under the circumstances, we are of the opinion that no case is made out by the appellant to interfere with the concurrent finding of fact recorded in the present case to the effect that the appellant had voluntarily abandoned service. The appeal, therefore, cannot be entertained and is liable to be rejected.

For the foregoing reasons, this appeal fails and the same is summarily dismissed.

[J.M Panchal, J.]

[A.M Kapadia, J.]

Prakash*